

Smart Communications Holding, Inc.

Master Services Agreement

This Master Services Agreement (this "Agreement") is by and between Dennis M. Lemma, as Sheriff on behalf of the Seminole County Sheriff's Office, whose address is 100 Eslinger Way, Sanford, Florida 32773, a Constitutional Officer of the political subdivision of Seminole County, State of Florida, hereinafter referred to as "Customer," and Smart Communications Holding, Inc. and/or its designated subsidiary or assignee, with principal offices located at 4522 W North B St., Tampa, Florida 33609, hereinafter referred to as "Provider."

This Agreement supersedes any and all other agreements made between the Parties, written, oral or otherwise.

Whereas, the Customer desires that Provider install inmate messaging, electronic mail and video visitation systems (Systems) and provide Systems and maintenance services according to the terms and conditions in this Agreement, and according to the Schedules, which are incorporated by reference into this Agreement, and;

Whereas, the Provider agrees to install the Systems and provide Systems and maintenance services according to the terms and conditions in this Agreement, and according to the Schedules, which are incorporated by reference into this Agreement;

Now therefore, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

1. Systems. This Agreement specifies the general terms and conditions under which Provider will perform certain inmate related services and systems (the "System(s)") for the Customer. Additional terms and conditions with respect to the Systems will be specified in the Schedules entered into by the Parties and attached (the "Schedules"). The Schedules are incorporated into this Agreement and are subject to the terms and conditions of this Agreement. In the event of any conflict between this Agreement and a Schedule, the terms of the Schedule shall govern.

2. Use of Systems. Customer grants Provider the exclusive right and license to install, maintain and derive revenue from the System through Provider's inmate services and Systems including, without limitation, the related hardware and software, located in the Customer's Facilities identified on the Schedules. Customer agrees that they will not resell or provide access to Provider's services and Systems directly or indirectly to third parties unless agreed upon in a separate written Agreement. During and subject to the terms and conditions of this Agreement, Provider shall be the sole and exclusive provider in lieu of any other third party provider of the services contained within the Schedules, including inmate messaging and email, texting, photo delivery system, video visitation, electronic education, electronic self-help, court mandated online courses, inmate electronic general requests, electronic grievances, electronic medical requests and electronic delivery of routine postal mail.

3. Hardware and Software License. For the term of this Agreement, Provider grants Customer a non-exclusive, non-transferable license to access and use certain proprietary computer software and hardware products and materials in connection with Provider's inmate services and Systems. Provider will provide free of charge all Software upgrades, modifications, and updates. All hardware upgrades, modifications and updates will be done at Provider's sole discretion. Provider shall maintain the Systems at the most current upgrade and update status at all times.

For services and systems that allow Customer to monitor and archive inmate postal mail, electronic messages, grievances, medical requests, educational, and video visitation by providing the inmate services and Systems, Provider makes no representation or warranty as to the legality of monitoring or archiving such communications and activities.

4. License Restrictions: The Software is to be used solely in connection with Provider's Services by Customer and inmates housed at the John E. Polk Correctional Facility and the Seminole County Juvenile Detention Center (Facilities) in connection with Provider's services and Systems. The Hardware is to be used solely by inmates housed

at the Facilities to access Provider's services and Systems. Unless and only to the extent that this Agreement expressly permits, Customer must not:

- (i) permit any parent, subsidiary, affiliated entity or third-party to use the Hardware or Software;
- (ii) rent, lease, lend, assign, sublicense, encumber or otherwise transfer or attempt to transfer the Hardware or Software or any portion thereof;
- (iii) alter, create derivatives of, or modify the Hardware or Software in any way, or allow a third party to do so;
- (iv) connect the Software or Hardware to any third-party products or services that were not approved of in writing by Provider;
- (v) distribute or otherwise make the Hardware or Software or any password, key, or other access code for the Software available to any third party;
- (vi) reverse engineer, decompile, or disassemble the Hardware or Software, or allow a third party to do so;
- (vii) defeat or work around any access restrictions or encryption in the Software, or allow a third party to do so;
- (viii) remove, minimize, block, or modify any titles, logos, trademarks, copyright and patent notices, digital watermarks, disclaimers, or other legal notices that are included in the Software, whether or not they are Provider's or a third party's;

5. Title. Provider shall have and retain all rights, title, and interest in the products and services provided to Customer. The Hardware, Software, Systems, networking, and cabling, including all modifications and updates of Software, shall at all times remain the sole and exclusive property of the Provider. Any trade secrets, methodology and processes of our services and Systems constitute proprietary information of Provider, regardless of any part or portion thereof is the subject of a valid copyright or patent. During the term of this agreement and for the time period(s) as stated in the Schedule for Systems, Provider will provide Customer access to the records.

6. Term. This Agreement shall commence on the effective date and shall continue for a period of three (3) years from the date of system going live as agreed to by both Parties. After the original three (3) year term, this Agreement shall automatically renew annually for similar terms unless either Party notifies the other Party with written notice of non-renewal at least ninety (90) days prior to the expiration of the then current term.

7. Limitation of Liability. To the maximum extent permitted by applicable law, Provider shall indemnify and hold harmless Customer, his agents, servants and employees from any and all claims, actions, lawsuits, judgments or liabilities of any kind whatsoever deriving from negligent acts or omissions of the Provider, its agents or sub-contractors. Each Party agrees that it shall be solely responsible for the negligent or wrongful acts of its own employees. However, nothing contained herein shall constitute a waiver by Customer of its sovereign immunity or other applicable State Statutes. Notwithstanding anything to the contrary in this Agreement or Schedules, neither Party shall have any liability for indirect, incidental, consequential, exemplary or special damages of any kind, including damages arising from lost profits, lost savings, lost income, loss of use or other benefit, lost or corrupted data or software, even if the Parties have been advised of the possibility of such damages and regardless of whether caused or contributed to by the negligence of Provider or others and notwithstanding anything to the contrary in this Agreement, in no event will Provider's liabilities under this agreement, whether under contract law, tort law, warranty, or otherwise, exceed the total amount of revenue received by Provider pursuant to this agreement, during the twelve (12) month period before the date the claim arose.

8. Confidential Information and Non-Disclosure. The Parties acknowledge that in their performance of their duties hereunder either Party may communicate to the other (or its designees) certain confidential and proprietary information, including without limitation information concerning the Party's services and know-how, technology, techniques, or business or marketing plans related thereto (collectively, the "Confidential Information") all of which

are confidential and proprietary to, and trade secrets of, the disclosing Party (the "Disclosing Party"). As a condition to the receipt of the Confidential Information from the Disclosing Party, the receiving Party (the "Receiving Party") shall, at all times during and after the term of this Agreement (i) not disclose in any manner, directly or indirectly, to any third party any portion of the Confidential Information; (ii) not use the Confidential Information in any fashion except to perform its duties hereunder or with the Disclosing Party's express prior written consent; (iii) disclose the Confidential Information, in whole or in part, only to employees and agents who need to have access thereto for the Receiving Party's internal business purposes; (iv) take all necessary steps to ensure that its employees and agents are informed of and comply with the confidentiality restrictions contained in this Agreement; and (v) take all necessary precautions to protect the confidentiality of the Confidential Information received hereunder and exercise at least the same degree of care in safeguarding the Confidential Information as it would with its own confidential information, and in no event shall apply less than a reasonable standard of care to prevent disclosure. The Receiving Party shall promptly notify the Disclosing Party of any unauthorized disclosure or use of the Confidential Information. The Receiving Party shall cooperate and assist the Disclosing Party in preventing or remedying any such unauthorized use or disclosure. The term "Confidential Information" does not include, and the obligations and undertakings set out in this section do not apply to: (a) Information which now is in the public domain or publicly known at the time of disclosure or hereafter comes into the public domain or generally known through no fault of the Receiving Party, otherwise than by reason of breach of this Agreement; (b) Information the disclosure of which is requested or required by law, regulation, court order or a regulatory agency, provided that, prompt notice of such requested disclosure shall be given to the Disclosing Party, if legally permitted, so that Disclosing Party may seek appropriate remedy to prevent such disclosure or waive compliance with the provisions of this Agreement and the Receiving Party, its directors, officers, employees, agents and advisers shall reasonably co-operate with the Disclosing Party, at the Disclosing Party's sole cost and expense, if the Disclosing Party elects to challenge the validity of such requirement and/or take such steps as the Disclosing Party may reasonably require to avoid or limit such disclosure; (c) Information that was previously known to the Receiving Party free of any obligation of confidentiality; (d) Information that is independently developed by the Receiving Party without reference to or use of the Confidential Information; or (e) Information that is disclosed to the Receiving Party by a third party not under or in violation of, as the case may be, any confidentiality undertaking to the Disclosing Party. Subsections (a) through (e) of this paragraph notwithstanding, the parties agree that the technology behind the Providers Services and Systems is Confidential Information and is a trade secret of Provider.

Provider shall keep and maintain public records required by Customer to perform the services provided within the scope of this agreement. Upon request from the Customer's Custodian of Public Records, Provider shall provide Customer with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes. Provider shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to Customer. Upon completion of the agreement, Provider shall transfer, at no cost, to the public agency all public records in possession of the Provider or keep and maintain public records required by the Customer to perform the services provided within the scope of this agreement. If Provider transfers all public records to the Customer upon completion of the agreement, Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Provider keeps and maintains public records upon completion of the agreement, Provider shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Customer upon request from the Customer's Custodian of Public Records, in a format that is compatible with the information technology systems of the Customer.

IF PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS VIA TELEPHONE AT 407-665-6690, EMAIL AT recordsrequest@seminolesheriff.org, OR VIA MAIL AT 100 ESLINGER WAY, SANFORD, FL 32773.

MailGuard will not release any records to a third party without proper and timely notification of Customer. In all instances, Customer must be notified immediately of any completed unauthorized access to Customer's data.

9. Default and Termination. If either Party defaults in the performance of any obligation under this agreement, then the non-defaulting Party must give written notice to the defaulting Party specifically describing the nature of default. The defaulting Party shall have thirty (30) days after receipt of notice of default to cure. If it is not reasonable to cure the default within thirty (30) days, then the right to cure period shall be extended to a reasonable cure period as long as the defaulting Party has made good faith attempts to cure the default. Upon termination of this Agreement, Provider shall remove all hardware and software Systems except for the cabling and conduit which shall become the property of the Customer. Provider shall have the right to immediately terminate this Agreement if Customer breaches the Confidentiality or Non-Disclosure provisions of this Agreement.

10. Insurance. Provider shall maintain General Liability Insurance including but not limited to bodily injury, property damage and personal injury with limits of not less than \$1,000,000 combined single limit covering all work performed under this contract. Customer shall be named as an additional insured for the General Liability coverage. Provider shall maintain automobile insurance including bodily injury and property damage including all vehicles owned, leased, hired and non-owned vehicles with limits of not less than \$300,000 combined single limit covering all work performed under this contract. Provider shall provide Worker's Compensation Insurance, on behalf of all employees who are to provide a service under this contract, as required by Florida (LAS), Chapter 440, and Employers Liability with limits of not less than \$100,000 per employee per accident. Customer agrees to furnish to Provider timely written notice of any claim, demand, or cause of action made or brought against Customer or where Provider is listed as a Co-Defendant arising out of or relating to the Systems and Services Provider provides to Customer.

11. Employees. Provider represents that it has, or will secure at its own expense, all personnel required in performing its obligations under this Agreement. All of the services required hereunder will be performed by the Provider or under its supervision and all personnel engaged in the work shall be fully qualified to perform such services. Provider and any subcontractors used in the performance of the responsibilities listed herein must maintain a drug-free workplace policy. Customer acknowledges that Provider is an independent contractor and nothing in this Agreement is intended nor shall be construed to create an agency relationship, and employer/employee relationship, a joint venture relationship or any other relationship allowing Customer to exercise control or discretion over the manner by which Provider performs hereunder. Provider expressly agrees that it shall be solely responsible for supervising its employees, it shall comply with all rules, regulations, orders, standards and interpretations promulgated pursuant to the OSHA Act of 1970, including but not limited to training, recordkeeping, providing personal protective equipment, lock/tag out procedures, material safety data sheets and labeling. Provider certifies that neither it nor any subcontractors used to accomplish its obligations hereunder, shall employ unauthorized aliens. Provider certifies that in accordance with the provisions of Title VII of the 1968 Civil Rights Act as amended by the Equal Employment Opportunity Act of 1972 and Executive Order 11914, that neither it nor any subcontractors used to accomplish its obligations hereunder discriminate on the basis of race, color, sex, religion, age, national origin or disability in their employment practices.

Miscellaneous

12. Warranty Against Contingent Fees. Provider warrants that no person or selling agency has been employed or retained to solicit this contract upon an agreement of understanding for commission, percentage, brokerage or contingency, except bona fide employees or selling agents maintained by the Provider for the purpose of securing business.

13. Subcontracts. Provider shall be allowed to use subcontractors for the purpose of completing the provisions of this Agreement. All subcontractors shall be pre-approved by Customer.

14. Provider Personnel. All Provider personnel being permitted to work in the Facilities will be subject to a security/background check by the Customer.

15. Provider Cooperation. Provider shall, at all times observe and comply with all Federal, State, and local municipal laws, ordinances, rules and regulations in any way affecting the Agreement. The Provider shall maintain regular

27. Assignment. Provider may not assign this Agreement or any interest herein at any time to any parent, successor, or subsidiary without prior written approval by Customer. In the event Customer does not agree to the assignment of the Agreement, Customer has the right to terminate the contract prior to the assignment.

28. Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement which shall remain in full force and effect and enforceable in accordance with its terms.

29. Matters to be Disregarded. The titles of the several sections, subsections and paragraphs set for in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

30. Notices. Any notices, demands, payments or reports required by this Agreement shall be in writing and sufficient if sent by the parties hereto via registered or certified United States mail, postage prepaid, to the notice addresses noted below the Parties signatures on the signature page.

31. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement. Any signature page of any such counterpart, or any telecopy or other electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any telecopy or other electronic transmission of a signature shall be deemed an original and shall bind the party who made such signature.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the duly authorized Officers and Agents and have set their hands and seals hereto as of the day and year written below.

Customer: Seminole County Sheriff's Office

By: 

Name: Dennis M. Lemma

Title: Sheriff

Date: 09/04/2018

Email: dlemma@seminolesheriff.org

Notice Address:
100 Eslinger Way
Sanford, Florida 32773

Provider: Smart Communications Holding, Inc.

By: 

Name: Jon Logan

Title: CEO

Date: 8-14-18

Email: jon.logan@smartcommunications.us

Notice Address:
4522 W. North B Street
Tampa, FL 33609